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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12
13 vs. Plaintiff,
14 FELICIANO RUANO YANEZ,
15 Defendant.
16

CASE NO. 13cr3515-LAB-1 and
16cv1964-LAB

**ORDER DENYING MOTION UNDER 28
U.S.C. § 2255**

17 After pleading guilty to importation of methamphetamine, Defendant-Petitioner
18 Feliciano Ruano Yanez was sentenced on April 8, 2014 to 138 months' imprisonment.
19 (Docket no. 36.) He brought no direct appeal. On May 25, 2016 he filed a motion under 18
20 U.S.C. § 3582(c)(2) to reduce his sentence pursuant to U.S.S.C. Amendment 782. The
21 Court denied that motion without prejudice to its being renewed pursuant to this District's
22 General Order #642. (Docket no. 39.) It was not renewed, however, and that denial is now
23 final.¹

24 On August 1, 2016, Ruano Yanez filed a motion pursuant to 28 U.S.C. § 2255. This
25 motion seeks relief under Amendment 794, which amended U.S.S.G. 3B1.2. Specifically
26 he asks that although at sentencing he was denied the benefit of minor role, he be given that
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28 ¹ Ruano Yanez's § 2255 motion incorrectly says this motion is still pending. (See
Docket no. 40, at 4, 11.)

1 benefit retroactively and resentenced. Amendment 794 was issued on November 1, 2015.
2 See *United States v. Quintero-Leyva*, 823 F.3d 519, 521 (9th Cir. 2016). This occurred well
3 after Ruano Yanez's conviction was final.

4 In general, the court is required to use the guidelines manual in effect on the date a
5 Defendant is sentenced. See *Dorsey v. United States*, 132 S.Ct. 2321, 2332 (2012);
6 U.S.S.G. § 1B1.11(a) (requiring use of "the Guidelines Manual in effect on the date that the
7 defendant is sentenced"). The U.S. Sentencing Commission did not make Amendment 794
8 retroactive to all cases. See U.S.S.G. § 1B1.10(d) (2015). But the Ninth Circuit has held it
9 retroactive on direct review. *Quintero-Leyva*, 823 F.3d at 523.

10 Although Ruano Yanez cited § 2255, he is not entitled to relief under this statute. He
11 is not arguing that his sentence was illegal when imposed, that it was imposed in violation
12 of U.S. law, or any of the other reasons listed in § 2255(a). Instead, he is arguing that he
13 ought to be given retroactive benefit of a clarifying amendment. This type of claim must be
14 brought as motion under 18 U.S.C. § 3582, not a § 2255 motion. See *Hamilton v. United*
15 *States*, 67 F.3d 761, 763 (9th Cir. 1995) (holding that a § 2255 claim can be based only on
16 a claim of lack of jurisdiction, constitutional error, an error resulting in "a complete
17 miscarriage of justice," or "a proceeding inconsistent with the rudimentary demands of fair
18 procedure") (quoting *United States v. Timmreck*, 441 U.S. 780, 783–84 (1979)).

19 Even if Ruano Yanez's motion were properly brought under § 2255, it would be
20 untimely. Such a motion must be brought within one year of certain listed events. See
21 § 2255(f). The latest of those events in this case was the date on which his judgment of
22 conviction became final, which was in 2014.

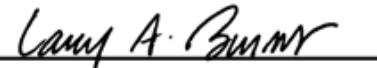
23 If the Court were to construe this as a § 3582 motion, Ruano Yanez's claim fails
24 because Amendment 794 is not retroactive for purposes of a § 3582 motion. See *Quintero-*
25 *Leyva*, 823 F.3d at 523 (holding that Amendment 794 was a "clarifying amendment"; *United*
26 *States v. Stokes*, 300 Fed. Appx. 507, 508 (9th Cir. 2008) (holding that a "clarifying
27 amendment" does not apply retroactively in a motion for reduction of a sentence under
28 § 3582).

1 Ruano Yanez also mentions ineffective assistance of counsel, but provides no facts
2 and admits he does not know whether he has such a claim. (Docket no. 40 at 11.)

3 The motion is **DENIED**, and a certificate of appealability is also **DENIED**. See 28
4 U.S.C. § 2253(c)(2).

5 **IT IS SO ORDERED.**

6 DATED: August 10, 2016

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8 **HONORABLE LARRY ALAN BURNS**
9 United States District Judge
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